U.S. Circuit Court (9th district)
James Morrison, vs. B. M. Mezes, and others, in equity. Motion for an injunction. Opinion of his Honor Ogden Hoffman.

In the Circuit Court of the United States,

FOR THE DISTRICTS OF CALIFORNIA.

JAMES MORRISON,

VS.

S. M. MEZES,

AND OTHERS,

IN EQUITY.

MOTION FOR AN INJUNCTION

Opinion of his Honor Ogden Hoffman,

DENYING THE MOTION.

SAN FRANCISCO:
PAINTER & COMPANY, BOOK AND JOB PRINTERS.
510 CLAY STREET.
1861.

United States Circuit Court

FOR THE DISTRICTS OF CALIFORNIA, IN AND FOR THE NORTHERN DISTRICT.

JAMES MORRISON,

v.

S. M. MEZES, et al.

IN EQUITY.

The Defendants, in this case, are the representatives of the original grantees of the rancho called "Las Pulgas."

Their claim having been finally confirmed by the Supreme Court, the rancho was surveyed, its boundaries determined, and a patent issued.

On this patent an action of ejectment was brought at a former term of this Court, to obtain possession of part of the lands included within it.

On the trial, evidence was offered on the part of the defense, to show that the survey and patent were erroneous, and that they embraced lands not properly included within the true boundaries of Las Pulgas.

This defense was overruled by the Court, on the ground, that the Defendants having neither a survey or patent, could not at law dispute the perfect legal title of the Plaintiffs.

The case was taken by writ of error to the Supreme Court, where the judgment of this Court was affirmed, and the case remanded for further proceedings.

A writ of restitution was accordingly issued, and this bill is filed to obtain an injunction to stay all proceedings, and that the Plaintiff to the ejectment may be decreed to convey to the present Complainant, the land whereof he is in possession, and which is alleged to have been erroneously included within the boundaries and patent of Las Pulgas.

The present Complainant was not a party to the ejectment suit. He has since acquired his interest in the land by purchase from one of the Defendants.

It is alleged, in the bill, 1st: That by the decree of confirmation the Pulgas Rancho was limited to a tract of one league in breadth from the bay, westwardly; and 2d, That if it be deemed to extend to the valley known as the "Cañada de Raymundo," that boundary is to be found by running a line on the crest of the hills which bound the valley on the east, and not by running it at the westerly base of those hills, and where the level land of the Cañada begins, as has been done by the Surveyor General.

The title under which the Complainants hold, is derived from Juan Coppinger, the original grantee of the "Cañada de Raymundo."

The boundaries of that rancho, as expressed in the grant, and the final decree of confirmation, are, on the east, by the rancho of "Las Pulgas;" on the west, by the Sierra Morena; on the south, by the Rancho of Martinez; and north, by the Laguna.

The grant of Las Pulgas, as confirmed by the Supreme Court, is bounded, "on the north, by the Arroyo of San "Francisquito; on the south, by that of San Mateo; on the "east, by the Estuary; and on the west, by the Cañada de "San Raymundo, the said land being of the extent of four "leagues in length, and one in breadth, be the same more "or less."

There is thus no conflict of title, as between Las Pulgas and the subsequent grant to Coppinger, for the latter calls for the line of Las Pulgas, as the eastern boundary.

That line having been established by competent authority, the claimant of Las Pulgas has obtained the full legal title to all the land in dispute.

But it is alleged that the tract in dispute, properly belongs to the Cañada de Raymundo Rancho, and that the claim for that rancho having been confirmed, its owner has an equitable title, which he may set up in a Court of Chancery, as against the legal title held by his opponent, and that, in the meantime, he is entitled to an injunction to stay the enforcement of the legal title by the patentee of Las Pulgas.

It is not denied that Courts of Chancery will frequently interpose in behalf of a party having the superior equity, to restrain the enforcement at law of the legal title. But, in such cases, a clear *prima facie* showing, that the Complainants possess the superior equity, will be exacted, and the Court will usually require proof of other equitable circumstances which require its interposition.

In this case, no fraud on the part of either the Surveyor, or the Defendants, is charged, nor are the latter alleged to be insolvent or unable fully to respond in damages for the rents and profits, if they should ultimately be compelled to convey the land to the Complainants.

The suit, which has at last terminated in favor of the De-

fendants, has been continued over a period of three years, during all of which they have been out of possession, and the present Complainant has purchased the land in controversy, *pendente lite*, and with a full knowledge of the adverse legal title of the Defendants.

Under these circumstances, the Defendants ought not to be enjoined from the assertion of their legal rights, and kept out of the possession to which they have been adjudged to be entitled, unless the Complainant has clearly shown that he has *prima facie*, at least, the superior equity. I have, of course, found no case exactly resembling the one under consideration.

It may be stated, however, as a general proposition, that, if the right be doubtful, Courts of Equity will not interfere, unless in exceptional cases, where the Defendant is insolvent, where irreparable mischief is threatened, and the like.

"Where the right of a party is doubtful, the Court will "not grant an injunction to prevent an illegal interference "with the same." (3 Paige, 213.)

"An injunction should not be granted to secure a claim "to statute privileges, if the right be doubtful." (3 Cowen, 713.)

"To warrant a Court of Chancery in issuing an injunc- "tion, strong *prima facie* evidence of the facts on which the "Complainant's equity rests, must be presented to the "Court, to induce its action." (Union Bank of Maryland *v.* Poultney, 8 Gill and Johns., 324.)

"Where there is doubt as to whether the Complainant's "trade mark has been actually pirated, in such a manner "as to be likely to deceive and impose upon his customers, "the Court will not grant an injunction until the hearing, "or until the Complainant has established his right by an "action at law." (Partridge *v.* Menck, 2 Barb., Ch. R., 101.)

"In order to support a motion for an injunction, the bill

"should set forth a case of probable right, and a probable "danger that the right would be defeated, without the "interposition of the Court." (2 Dallas, 405.)

With regard to injunctions, after judgment at law, it is laid down by the Supreme Court, as a general principle, "that any fact which *proves* it to be against conscience to "execute such judgment, and of which the party could not "have availed himself in a Court of law, or of which he "might have availed himself in a Court of law, but was "prevented by fraud, or accident, unmixed with any "fault or negligence in himself, or his agents, will autho- "rize a Court of Equity to interfere by injunction, to "restrain the adverse party from availing himself of such "judgment." (Truly *v.* Wanzer, 5 How., 142.)

And in the same case, the Court quotes and adopts the remarks of Mr. J. Baldwin, (Baldwin's Rep., 218): "There "is no power, the exercise of which is more delicate, which "requires greater caution, deliberation and sound discre- "tion, or more dangerous in a doubtful case, than the issu- "ing an injunction. It is the strong arm of equity, which "ought never to be extended unless to cases of great "injury, where Courts of law cannot afford an adequate and "commensurate remedy in damages. The *right must be* "*clear*, the injury impending and threatened, so as to be "averted only by the protecting preventive process of "injunction."

It is unnecessary to multiply authorities on points so clear. Enough have been cited to establish the general rule by which the Courts are governed in applications of this nature. I proceed to enquire whether the Complainant has made out such a case as will entitle him to the interposition of the Court.

His alleged equitable rights are based on the ground that the true western boundary of Las Pulgas is either a line drawn from creek to creek, at the distance of one

league from the bay, or a line drawn along the crest of the range of hills which form the eastern side of the Cañada.

In considering this question, the grant and the evidence, and decrees in the Las Pulgas case, and the recent decision of the Supreme Court, in the ejectment suit of Greer *v* Mezes, *et als.*, must be adverted to.

The claim for "Las Pulgas," as presented to the Board of Commissioners, embraced a tract of land bounded on the north and south by the San Mateo and San Francisquito Creeks, and extending from the bay westwardly some three leagues to the sierra, or range of mountains, so as to include the Cañada de Raymundo.

The title to this tract was alleged to consist, first, of a grant or license derived from Governor Borica, in 1795; secondly, of a grant by Sola, in 1820 or 1821; thirdly, of a grant by José Castro, in 1835.

The alleged title, under the first two grants, was rejected by the Court, and the claim confirmed, under the last, or Castro grant.

The expediente of that grant shows that the petition was, as usual, referred to for information as to the extent and boundaries of the land, etc.

Witnesses were accordingly examined, and their testimony is embodied in the report of the Alcalde.

The first of these witnesses states that the rancho of "Las Pulgas" has an extent of four leagues, a little more or less, of latitude north and south, and one league, a little more or less, from east to west. That the boundaries are the Creek of San Francisquito to the south, that of San Mateo to the north, and on the east and west, the estuary and the hills situated at the west of the Monte Redondo and the "Cañada de Raymundo.

The second witness states the extent of the rancho in

similar terms, and that its boundaries are the two creeks, "the estuary and the mountains covered with trees."

The third witness gives the same description, except that he describes the western boundary as "the mountains "covered with trees of the Cañada de Raymundo."

These descriptions, which probably furnished to the Governor all the information he possessed, clearly include the Cañada de Raymundo within the limits of "Las Pulgas," while they at the same time display the incorrectness of the vague conjectures of the early inhabitants of this country, as to distance between natural objects, and the quantity of land included within notorious boundaries.

In the decree of concession, the Governor grants the tract known under the name of "Las Pulgas," but he specifies neither its boundaries or its extent. In the final title, the limits of the tract are described as follows: "On "the south, the Arroyo de San Francisquito; on the north, "that of San Mateo; on the east, the Estuaries; and on "the west, the Cañada de Raymundo. The land herein mentioned is four leagues in latitude, and one in longitude."

It was held by the Board, and by this Court, that, by the terms of this grant, the tract was bounded by, and did not include the Cañada de Raymundo, notwithstanding that the rancho known as "Las Pulgas" was clearly proven by the witnesses before the Alcalde to include that valley.

But it was not considered, either by the Board or this Court, that the mention in the grant of the supposed length and breadth of the tract, should be treated as a limitation of the quantity granted. For that estimate of quantity was evidently founded on the loose conjectures of the witnesses summoned by the Alcalde. No sobrante clause was inserted in the grant, whereby the excess was reserved to the nation, and the land was described by great natural boundaries, and by a name known to indicate an estab-

lished rancho, whereof, as the grant declares, the petitioners had claimed to be the owners since the year 1800. The Board, therefore, confirmed the claim to the tract of "Las Pulgas," with the boundaries mentioned in the grant, "said land being of the extent of four leagues in length, "and one in breadth, *be the same more or less.*" While, in the decree of this Court, the same description was adopted, but all mention of the supposed extent of the land was omitted.

This decree was affirmed by the Supreme Court, and declared by their judgment to contain "no error," but in the decree entered by them, the form of the decree of the Board was adopted—it would seem for the reason, that it more specifically mentioned the several interests of the claimants.

On this decree, the survey was made and the boundaries established.

The idea of limiting the tract to a width of one league from the bay, and discarding the call for the Cañada de Raymundo, would seem first to have been entertained since the decision of the Supreme Court in the ejectment suit.

In the opinion of the Court, in that case, there are undoubtedly some observations which justify the inference that the Court supposed the western line of the rancho was to be drawn at the exact distance of one league from the bay. But it will be noticed that these observations were made in answer to the allegation that the survey included some of the level land of the Cañada, and seem to have been intended to affirm the right of the claimant of Las Pulgas to run the western line at least that distance from the bay, rather than to limit the tract to that precise breadth.

It is also to be observed, that these remarks were not called for by the case, nor could the Court have intended

to decide a question which their opinion declares could not be raised, and the testimony as to which they exclude as inadmissible.

The point passed upon was, whether the equitable rights, whatever they might be, of the Defendants, could be set up as a defense to an ejectment brought by the holder of the legal title.

It was decided that they could not. All remarks, therefore, as to the nature and extent of the equitable rights, thus excluded from consideration, were clearly *obiter dicta.*

Anxious as I am to follow, in my judgments, even any incidental remarks of the Supreme Court, I should be tempted to do so in this case, were it not that the opinion itself discloses that their attention was not directed to some very important points, which, had their decision turned upon them, would not have been overlooked.

It is stated that the Court had, by its decree, confirmed the claim to a tract "bounded on the north and south by "the two creeks, and on the east and west by the bay and "the Cañada, being four leagues in length, and one in breadth." The important words, "*be the same more or less,*" inserted in the decree of the Board, and in that of the Supreme Court, as appears by the mandate, are *omitted.*

Had the justice, who delivered the opinion, noticed these words, and been made aware that a line drawn one league from the bay would exclude from the rancho a valuable tract lying between it and the Cañada, it is but reasonable to suppose he would have reconsidered his observations. Again, it is said in the opinion referred to, that "it does "not follow that if the western line of Las Pulgas, as run "by the Surveyor General, included level lands in the val- "ley, that it was at all incorrect." * * * *

"Las Pulgas was entitled to have the league in breadth, "whether it carried the western line over the hills or not."

In other words, that a part, or even the whole, of the Cañada de Raymundo was to be included in the survey, if found to be within a line drawn one league west from the bay.

But whether the grant included any part of the Cañada, or was bounded by it, was the principal question discussed and adjudged by the Board, and the District and Supreme Courts. In the decree of this Court, it is expressly said that the tract is bounded "by the Cañada de Raymundo "on the west, excluding all of said Cañada,"—and this decree was affirmed.

In the decree of the Supreme Court the same boundary is adopted, and it is added, "that as to the portion of the "premises mentioned in the petition, which is not in- "cluded within the boundaries above mentioned, the claim "of the petitioner is hereby decreed not to be valid."

I cannot consider that the Supreme Court meant, by an *obiter dictum*, in a case where the point was not open for discussion, to modify, in so important a particular, its previous decree, and to decide that Las Pulgas was not bounded by the Cañada, but might extend over and include the same, or so much thereof as might be necessary to give to the rancho the full breadth of one league.

But it is urged that a juridical measurement of the tract was made, and its boundary fixed at the distance of one league from the bay.

It is to be noticed, however, that no record of this measurement is produced, or its absence accounted for. The proof of it rests on the parol testimony of a witness, who says that he was present.

It appears, from his account, that the magistrate first measured from creek to creek, and found the distance four leagues.

He then measured from the bay westwardly, "to a point "*near, before entering the plain of the Cañada*, making the dis- "tance one league."

The distance between the creeks considerably exceeds four leagues, yet it has not been suggested that those two natural objects are not the true boundaries of the grant, on the north and south. And, in like manner, it would seem that, if the juridical measurement is to be appealed to, the western boundary is to be fixed at "a point near before entering the plain of the Cañada," where, as stated by the witness, marks were set up, provided that that point can now be ascertained.

On the whole, I strongly incline to the opinion that the western boundary must be fixed either at the point established by the judicial officer, or at the Cañada de Raymundo, as called for in the grant and in the decree of confirmation; and that it is, at least, extremely doubtful whether the grant and decree can be construed as fixing it at the precise distance of one league from the bay, irrespective of the question, whether the Cañada would thereby be reached, or a portion of it included.

But it is contended that, even assuming the Cañada to be the boundary, it must be taken to commence at the crest of the range of hills which forms its eastern side, and not at the point where the level land begins.

The Cañada de Raymundo is a long and narrow valley, bounded on the east and west by ranges of hills.

To one travelling along the plain, it may not be, at all times, easy to define the precise point at which the faldas, or slopes of some of the least abrupt hills cease, and the plain begins. But the boundary is, perhaps, not more difficult to establish than the line of a "sierra," or of *lomas bajas*, by which so large a portion of the grants in this country are bounded, and which is so frequently ascertained by the surveyor without difficulty or dispute.

Whether the Governor, in designating the Cañada de Raymundo, meant merely this level tract, or intended to include the slopes of the hills to the east and west, up to their crest, is a question of some difficulty.

That Coppinger, when petitioning for the Cañada, could hardly have intended to ask for more than the valley, might be inferred from the fact that he states it as "about two "and one-half leagues in length, and *three-quarters of a "league in breadth, at the utmost.*"

The width of the tract surveyed to Coppinger, is about two and one-half miles, or nearly one Spanish league, while, if his line be fixed as now claimed, on the crest of the hills, the width of the rancho would be about one league and a quarter.

The case presents other questions equally embarrasing.

It is contended that a survey, approved by the proper department, and which has been patented, ought to be regarded as final and conclusive, unless where fraud or gross mistake is shown; and especially where, as in this case, patents have issued for both ranchos, although one of them, (that for the Cañada), has not been accepted by the Claimants of that rancho.

It is urged that, if the lines of patented ranchos be disturbed, endless confusion will ensue. For, whenever the grant is for a specified quantity of land, the grantee should be entitled, if a portion of the quantity surveyed to him be cut off at the suit of a neighbor, to make up the deficency by extending his lines in some other direction. This he can, in many cases, only do by intruding on the land already surveyed and patented to a neighbor, who, in turn, would be entitled to make up the quantity granted to him, by a similar encrochment on land patented to one of his colindantes, and thus the titles of grantee, and purchasers under them, throughout an indefinite extent of country, would be thrown into confusion.

It is also sugested that, if the party seeking to disturb the survey and patent, has already obtained his full quan-

tity of land, any portion of the lands surveyed to his neighbor, which he might afterward acquire, would be in excess of the quantity to which he was entitled; and thus, by accepting the patent, after the termination of the suit, he might retain his full quantity as surveyed, and also the quantity cut off from his neighbor, unless the United States should institute a proceeding to set aside the patent, which would thus give rise to endless litigation,

On the other hand, it is urged that the line of the Pulgas was fixed by the Surveyor, *ex parte*, as against the owners of the Cañada; that the decrees of the Court, and surveys under them, are, by law, final and conclusive, as between the United States and the Claimant, but not as against third parties, and it would be the height of injustice to take from the owner of the Cañada a portion of his land and give it to "Las Pulgas," by a proceeding to which the former was no party, and in which he could not have been heard.

There is great force in these suggestions.

But the practical hardship is no greater than if the land east of the Cañada had been public land, and the limits of the Cañada had been established as between the United States and the owner of that rancho.

In such case, the approved survey, and the patent issued under it, (whether accepted or not,) would have been conclusive.

If it be said that the claimant of the Cañada, in that case, would be justly concluded, because he was a party to the proceeding, but that he ought not to be concluded by a proceeding between the United States and Las Pulgas, it may be answered that, until the second decision in United States *v.* Fossatt, it was universally supposed that the jurisdiction of this Court "was *limited* to the making of deci-"sions on the validity of the claim, *preliminary* to its loca-"tion and survey by the Surveyor General of California," (20 How., 425,) and it was only after that decision, that this

Court exercised any jurisdiction to supervise and reform the surveys under its decrees.

The settlement, therefore, of boundaries by the Surveyor General was, previous to that decision, practically a proceeding in which the *claimant* was not heard, except by representations addressed to the Surveyor General or the executive officers at Washington, and there would seem no greater reason in holding *him* concluded by the determination of the Surveyor, whose action he has had no opportunity of submitting to a Court, than the *Colindante*, who could equally have addressed representations and remonstrances to the executive officers.

But if it is to be considered that the claimant is bound, because, as subsequently decided, he might have invoked the interposition of the Court, the colindante might also be deemed to be concluded, for the same reason; for he, too, might have been heard in opposition to the survey of his neighbor.

But it is unnecessary further to pursue this discussion. Enough has been said to show, that the questions of law and fact involved in this case are doubtful and difficult.

Under such circumstances, I can see no reason for interrupting the exercise by the Defendants of their legal rights; more especially, as no irreparable injury can ensue to the Complainant. The Defendant is abundantly able to account for the rents and profits, if the land should finally be adjudged to the Complainant. The latter has purchased, *pendente lite*, and since the patent to the Defendant was issued; and the contest seems, in effect, to be, whether the patent shall be temporarily nullified, and the Complainant remain in possession, giving bond to the Defendant, or the latter enter upon a possession adjudged to be his, and subject to the liability to account to the Complainant, should he succeed in establishing the better title.

It seems to me that the latter alternative should be adopted.

Injunction refused.